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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/750,188

12/30/2003

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19,043

9141

23556 7590 03/16/2009
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EXAMINER

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ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

03/16/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/750,188
Filing Date: December 30, 2003
Appellant(s): SCHLINZ ET AL.

Randall W. Fieldhack
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 5 December 2008 appealing from the Office action mailed 14 July 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,931,825	KUEN et al.	8-1999
6,515,029	KRZYSIK et al.	2-2003
4,938,753	VAN GOMPEL et al.	7-1990

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-2 and 7-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuen et al. (5,931,825) in view of Krzysik et al. (6,515,029).

Kuen discloses all aspects of the claimed invention with the exception of the crotch region width being less than the waist region width. Kuen discloses an absorbent garment, as shown in figure 1, having front and rear waist regions and a crotch region. The garment comprises a liquid barrier layer 48 and a stretchable carrier layer 46 placed in a facing relationship with the barrier layer 48, as shown in figure 3, and extending from the front waist region to the rear waist region, as shown in figure 2. The stretchable carrier layer 46 comprises a nonwoven material, as disclosed in column 4, lines 28-29, which is fully capable of being stretched. An elastic layer 36 is attached to the stretchable carrier layer 46, as shown in figure 3, and extends away from the lateral

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centerline of the garment, as shown in figure 2. An absorbent section 56 is disposed on the inner surface of the liquid barrier layer 48, as shown in figure 3.

Krzysik teaches an absorbent article, as shown in figure 1, having a crotch region 26 that is less wide than the waist regions 20 and 22. The narrower crotch region provides for curved, and therefore more comfortable, leg openings. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the article of Kuen with a narrower crotch region, as taught by Krzysik, to allow for more comfortable leg openings.

With respect to claim 2, the absorbent section 56 is disposed on the inner surface of the stretchable carrier layer 46, as shown in figure 3.

With respect to claims 7 and 8, the elastic layer 36 is attached to the stretchable carrier layer 46 on both sides of the lateral centerline of the garment in both the front and rear waist regions, as shown in figure 2.

With respect to claim 9, the stretchable carrier layer 46 comprises a nonwoven material, as disclosed in column 4, lines 28-29, which is fully capable of being stretched in the lateral direction of the garment.

With respect to claims 10 and 12, a fastener element 20 attaches the elastic layer 36 to form the garment, as shown in figure 1.

With respect to claim 11, an elastic ear material 34 is bonded to a side edge of the elastic layer 36, as shown in figure 3.

Claims 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuen et al. (5,931,825) in view of Krzysik et al. (6,515,029), and further in view of Van Gompel et al. (4,938,753).

Kuen, as modified by Krzysik, discloses all aspects of the claimed invention with the exception of the method of making the absorbent garment. Van Gompel teaches the method of forming a series of garments and selectively cutting into individual garments, as shown in figure 14 and disclosed in column 12, lines 3-37, to efficiently manufacture a large number of garments at once. It would therefore be obvious to one of ordinary skill in the art at the time of invention to produce the garments of Kuen by the method taught by Van Gompel, in order to efficiently manufacture a large number of garments at once.

(10) Response to Argument

In response to the Appellant's arguments that Kuen does not disclose an outer layer that is stretchable, it is noted that Kuen discloses in column 4, lines 27-31, an outer layer 46 comprising a spunbond nonwoven web. A nonwoven web, while not inherently elastically stretchable, is fully capable of being stretched when subjected to pulling forces. However, the present claims do not require elasticity. The present claims disclose a stretchable carrier layer, or in other words, a carrier layer that is able to be stretched. The broadest reasonable interpretation of the term 'stretchable' refers to a material that is able to be elongated under pulling forces, whether or not it then returns to its original length, as described in the present specification on page 10, lines 8-13. It

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is further noted that the present specification discloses on page 10, lines 18-19, that suitable materials for the stretchable outer cover include nonwoven materials.

Therefore, the nonwoven outer layer of Kuen is fully capable of exhibiting the same properties as the claimed carrier layer (i.e. is fully capable of being stretched), and fulfills the limitations of the present claims.

In response to the Appellant's argument that the Examiner has not provided adequate motivation to combine the cited references, it is noted that Krzysik teaches providing an absorbent article with curved leg portions, which is known in the art to provide a more comfortable, body-conforming fit. As noted by Appellant, motivation for the combination of references must come from either the references **or** from the knowledge available to one skilled in the art. The Examiner has chosen to provide motivation from knowledge available to one skilled in the art. A curved crotch region, such as that disclosed by Krzysik corresponds to the wearer's natural leg shape. One skilled in the art would readily understand that the curved, narrowed crotch region of Krzysik would provide a more comfortable fit than the straight crotch region of Kuen. Therefore, one skilled in the art would be motivated to modify the absorbent article of Kuen based on the teachings of Krzysik.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,

C. Lynne Anderson

/Lynne Anderson/

Examiner, Art Unit 3761

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